



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: LNO - 176081

PRELIMINARY RECITALS

Pursuant to a petition filed on August 5, 2016, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Department of Children and Families /Wisconsin Works (W-2) regarding W2, a hearing was held on November 2, 2016, by telephone.

The issue for determination is whether the agency may docket a warrant to collect an overissuance of Wisconsin Works benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: Erin Ditscheit, of Forward Services Corp for the
Department of Children and Families /Wisconsin Works (W-2)

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

This hearing was held with a hearing for the mother of Petitioner's child (Case # LNO-176061). Both appeals were filed together to contest a [REDACTED] Works (W-2) overpayment and the docketing of a warrant to recover the W-2 overpayment. While similar the cases are not identical and separate decisions are issued.

FINDINGS OF FACT

1. Petitioner is currently a resident of [REDACTED] but was a resident of [REDACTED] at all times relevant here.
2. Petitioner was sent a Notice of Warrant Docketed in [REDACTED] dated August 3, 2016. The amount due is noted to be \$5888.90.
3. Petitioner timely appealed the warrant notice.
4. There is no record of a [REDACTED] Works overpayment notice for Petitioner though one, dated November 20, 2012, was sent to the mother of Petitioner's child. That notice was sent to her at her address in [REDACTED] at the time of the notice. It does note that an appeal had to be filed within 45 days. The amount of the overpayment was \$5937.00. The reason for the overpayment was that the agency alleged she and Petitioner were living together but this had not been reported by the couple. The November 20, 2012 notice names only the mother of the child as a liable party. There is no record that she requested a review of the overpayment from the W-2 agency.
5. The mother of the child applied for energy assistance in [REDACTED] on December 4, 2012. Petitioner and the mother moved to [REDACTED] sometime after this in December 2012 – most likely mid-month.
6. The mother of Petitioner's child was in phone contact with the economic support agency on January 9, 2013 and reported that she had moved to [REDACTED] and no longer wanted public benefits from Wisconsin.
7. A repayment agreement was sent to Petitioner on 12/4/12 at the [REDACTED] address. Dunning notices of 1/3/13, 2/4/13 and 3/4/13 were all sent to Petitioner at the [REDACTED] address.

DISCUSSION

Under *Wis. Stat., §49.195(3m)*, if a person fails to repay a public benefits overpayment, the Department may issue a warrant with the county clerk of court that will impose a lien on property owned by the debtor. This includes Wisconsin Works (W-2) benefits. The *Wisconsin Administrative Code, §DCF 101.23(9)* allows the Department to issue such a warrant if repayment of a W-2 (§49.148, *Stats.*) is delinquent. The person may appeal the warrant to the Division of Hearings and Appeals, but the only issues that the administrative law judge may review are whether the debt is repaid in full or whether there is mistaken identity. *Wis. Adm. Code, §DCF 101.23(9)(a)5*.

The problem for the agency here is that there is no proof that Petitioner was ever notified of the debt. This is required. *See Wis. Admin. Code, §DCF 101.23(2)(b)*. While logically it would seem that the agency at the time of the events here must have added him as a liable party in order to send dunning notices there is no record that he was notified of liability and afforded an opportunity for a review. *See Wis. Stat., §49.152(1)*. In fact the dunning notices were sent to the [REDACTED] address even though the mother of the child in common reported in January 2013 that she had moved to [REDACTED]. If they were alleged to have been living together, it would be reasonable to assume he moved also - or at least inquire about it. While this may be a technicality, without such documentation of notice, it is not clear that Petitioner is a liable party. As such the identity issue has not been fully documented here so the warrant must be reversed.

CONCLUSIONS OF LAW

The Department is not authorized to docket the warrant in this case because the evidence is not sufficient to identify Petitioner as a liable party.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to withdraw the warrant that was the subject of this hearing. This process must be started within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of January, 2017

\s _____
David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 4, 2017.

Wisconsin Works (W-2)
Public Assistance Collection Unit